

Message Text

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FM AMEMBASSY CAPE TOWN

TO SECSTATE WASHDC 4216

INFO AMCONSUL DURBAN

AMCONSUL JOHANNESBURG

AMEMBASSY PRETORIA

LIMITED OFFICIAL USE CAPE TOWN 0835

E.O. 11652: N/A

TAGS: PINT, SF

SUBJECT: SCHLEBUSCH TRIALS: NAUDE RULED GUILTY

REF: A) PRETORIA 1015: B) PRETORIA 1365

1. SAG HAS WON ITS APPEAL AGAINST LOWER COURT DECISION WHICH HAD FOUND REV. BEYERS NAUDE NOT RPT NOT GUILTY OF CONTRAVENINT COMMISSION ACT FOR REFUSING TO TESTIFY BEFORE SCHLEBUSCH COMMISSION.

2. NAUDE HAD ORIGINALLY BEEN DECLARED GUILTY IN NOVEMBER, 1973 BY A MAGISTRATE FOR VIOLATION OF COMMISSION ACT. HE APPEALED MAGISTRATE'S DECISION TO TRANSVAAL SUPREME COURT WHICH REVERSED IT ON GROUNDS THAT REFUSAL TO TESTIFY DID NOT CONSTITUTE CRIMINAL OFFENSE BECAUSE FULL COMMISSION OF INQUIRY HAD NOT BEEN PRESENT AT HEARING (REFTEL A). SAG THEN DECIDED TO APPEAL TRANSVAAL COURT DECISION TO NATIONAL SUPREME COURT IN BLOEMFONTEIN (REFTEL B).

3. ON DECEMBER 2, BLOEMFONTEIN COURT REVERSED TRANSVAAL DECISION AND UPHELD ORIGINAL MAGISTRATE'S RULING. IN MAJORITY LIMITED OFFICIAL USE

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OPINION, COURT RULED THAT FOUR MEMBERS OF COMMISSION WHO

ATTENDED MEETING AT WHICH NAUDE REFUSED TO TESTIFY MUST BE CONSIDERED AS ACTING IN A LEGAL MANNER FOR MXE ENTIRE SIX-MAN COMMISSION. CONSEQUENTLY, INITIAL PENALTIES IMPOSED BY MAGISTRATE (50 RAND FINE OR ONE MONTH IN JAIL, AND 3 MONTHS IN JAIL; LATTER SUSPENDED FOR 3, YEARS) MUST BENCOMPLIED WITH.

4. IN RELATED MATTER, TRIALS OF REV. THET KOTZE, CAPE REGIONAL DIRECTOR OF SPRO-CAS, ON SAME CHARGE OF REFUSING TO TESTIFY YEFOR SCHLEBUSCH COMMISSION HAVE BEEN POSTPONED ONCE AGAIN UNTIL FEBRUARY 1975. KOTZE TOLD EMOFF DECEMBER 2 THAT NAUDE, WHO RETURNS FROM THE U.S. DEC 7, WILL PROBABLY NOW APPEAL ORIGINAL MAGISTRATE'S DECISION ON OTHER GROUNDS. ACCORDING TO KOTZE, NAUDE MAY ARGUE THAT HIS MORAL AND RELIGIOUS CONVICTIONS PROVIDE "JUST CAUSE" FOR NOT TESTIFYING. ("JUST CAUSE" HAD HITHERTO BEEN USED IN SOUTH AFRICA IN CASES OF PHYSICAL OR MENTAL INCAPACITATION WHICH INHIBIT PRESENTATION OF TESTIMONY.) WHATEVER THE OUTCOME OF THE NEW APPEAL, IF IT IS LAUNCHED, KOTZE WAS EMPHATIC IN STATING THAT NEITHER NAUDE NOR OTHER DEFENDENTS, INCLUDING HIMSELF, WOULD PAY FINE RATHER THAN GOING TO JAIL.
HURD

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